

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	

To: Wireline Competition Bureau

COMMENTS OF THE NAVAJO NATION TELECOMMUNICATIONS REGULATORY COMMISSION (NNTRC) IN RESPONSE TO TRACFONE’S PETITION AND NEXUS COMMUNICATIONS’ EX PARTE SUBMISSION

The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”), through undersigned counsel, and pursuant to Sections 1.415 and 1.419 of the Commission’s rules (47 C.F.R. §§ 1.415 & 1.419) respectfully submits these Comments in the above-referenced proceeding in response to the Petition filed by TracFone Wireless, Inc. (“TracFone”), requesting that the FCC commence a rulemaking proceeding “for the purpose of amending its Lifeline rules to prohibit in-person distribution of handsets to prospective Lifeline consumers as a means to prevent waste, fraud, and abuse in the Lifeline program.”¹ On May 10, 2013, Nexus Communications, Inc. (“Nexus”) filed *ex parte* comments in this proceeding, taking TracFone’s proposal a step further, prohibiting ETC’s from signing up Lifeline customers in “tents, vehicles

¹ See Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers; Lifeline and Link Up Reform and Modernization et al, Petition for Rulemaking, WC Dkt. Nos. 11-42 et al., CC Dkt. No. 96-45 (filed May 13, 2013) (TracFone Petition).

or other temporary structures” (“the Nexus Proposal”).² On May 16, 2013, the FCC’s Wireline Competition Bureau released a Public Notice seeking comment on the TracFone Petition.³ In support of these Comments, and in opposition to TracFone’s petition and the Nexus Proposal, NNTRC submits:

I. BACKGROUND

As the largest native nation in the United States (in both population and reservation size), the Navajos have been particularly disadvantaged by Federal and state communications policies. The Navajo Nation consists of 17 million acres (26,111 square miles) in portions of three states (Arizona, New Mexico, and Utah). The Navajo Nation is comparable in size to West Virginia. Were it a state, the Navajo Nation would rank 4th smallest in population density; only Montana (6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are less densely populated.⁴ The “information age” has scarcely reached Tribal Lands; only 70 percent of which are served by Plain Old Telephone Service (“POTS”), as compared with near ubiquitous POTS service elsewhere in America (98%).⁵

The NNTRC was established pursuant to Navajo Nation Council Resolution ACMA-36-84 in order to regulate all matters related to telecommunications on the Navajo Nation.

² See *Ex Parte* of Nexus Communications, Inc. in Dockets 11-42 and 03-109, filed May 10, 2013.

³ Public Notice, DA 13-1109, released May 16, 2013. The Wireline Competition Bureau set June 17, 2013 as the date for filing comments and July 2, 2013 for filing reply comments.

⁴ Compare http://en.wikipedia.org/wiki/List_of_U.S._states_by_area (states ranked by geographic area) with http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density (states ranked by population density).

⁵ As recently as 2000, POTS penetration in Navajo households was only 22 percent. See FCC “Fact Sheet Promoting Deployment/Subscribership in Underserved Areas, including Tribal and Insular Areas,” released June 8, 2000. Because of the failure of the Federal government to make a place at the table for Tribes in the past, the Navajos find themselves without effective 911 service, while the state of Arizona in 2009 returned \$8,655,700 of the \$17,460,160 collected (or almost exactly 50 percent) to the state general fund, apparently concluding that all Arizonans had access to 911 service. See *Second Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, issued August 13, 2010 (released August 16, 2010), p. 10.

Telecommunications is defined broadly under the Navajo Nation Code to include broadband and “any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum.”⁶ The NNTRC is committed to the protection of the public welfare, regulation and the security of the Navajo Nation and its people with regard to telecommunications. Its purpose is to service, develop regulation and to exercise the Navajo Nation’s inherent governmental authority over its internal affairs as authorized by the Navajo Nation Council pursuant to NNTRC’s Plan of Operation and the Navajo Telecommunications Regulatory Act.⁷

NNTRC is specifically authorized, pursuant to the Navajo Telecommunications Regulatory Act, to act as the intermediary agency between the Navajo Nation and the Federal Communications Commission, including representing the Navajo Nation in proceedings before the Commission, intervening on behalf of the Navajo Nation on matters pending before the Commission, and filing comments in rule making proceedings.

II. THE FCC SHOULD REJECT TRACFONE’S PETITION AND THE NEXUS PROPOSAL

A. The Overhaul of the Lifeline Program Has Already Reached its Goal of Eliminating Those Not Eligible to Receive Support Under the Program

As TracFone points out in its Petition, the reforms made in the *Lifeline Reform Order*⁸ have already saved the government more than it originally anticipated through the vigorous culling of the rolls of Lifeline participants.⁹ The Commission originally anticipated a savings of

⁶ 21 N.N.C. § 503 (V).

⁷ Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529.

⁸ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, *Report and Order and Further Notice of Proposed Rulemaking*, 27 FCC Red 6656 (2012) (“*Lifeline Reform Order*”).

⁹ *TracFone Petition*, p. 3.

\$200 million, yet in January 2013 it was able to report that the anticipated savings will reach \$400 million in 2013 and \$2 billion through 2014.¹⁰ The NNTRC filed comments opposing several of the measures taken in that proceeding, arguing that the “one to a household” rule, and automatically eliminating any subscriber who did not use their phone in the last 60 days would unfairly impact the Navajo Nation.¹¹ Indeed, the reports filed by carriers indicate that approximately 30%¹² percent of all Navajos who received Lifeline support have now been stricken from the rolls.

Yet for TracFone, and Nexus, these reforms are not enough. TracFone now wants the FCC to further restrict access to the Lifeline program by requiring that carriers be prohibited from distributing phones “in person,” and instead require a multi-step process which includes the mailing of phones to Lifeline subscribers. The Nexus Proposal goes even further, prohibiting carriers from signing up customers in anything but traditional brick-and-mortar stores, prohibiting signing up subscribers in mobile units, or at temporary accommodations at events. As discussed below, the FCC should reject both of these approaches.

B. The Proposals Discriminate Against the Navajo

It is clear that neither Nexus nor TracFone actively operate on the Navajo Nation, otherwise they never would have made these proposals to the Commission. Indeed, it is highly unlikely that any decision makers in either of these companies have spent any time on the Navajo reservation, if at all. Navajo culture revolves around personal interaction, and most Navajo

¹⁰ *FCC News Report: Major Reforms to Lifeline Program on Track to Cut at Least an Additional \$400 Million in Waste, Fraud, and Abuse in 2013; Reforms on Schedule to Save More Than \$2 Billion by End of 2014*, released February 12, 2013.

¹¹ See Comment of NNTRC in Docket 11-42, filed January 20, 2012.

¹² Calculated from FCC Forms 555 of Navajo Communications, Sacred Wind Communications, Table Top Communications, Smith Bagley Inc. of Study Areas: 459001,499001,509002, 454449, 494449, 494303, and 453334.

would shy away from offers to “sign up today and get a phone in the mail.” Not only is that impersonal, but with mail delivery unavailable in some areas of the reservation, and unreliable in others, few Navajos would trust that their phones would ever get to them under this scenario.

The Nexus Proposal is even more discriminatory and displays a total lack of understanding of the Navajo people and the meager infrastructure that exists on the Navajo Nation. Nexus wants to ban any Lifeline phones being issued from anything other than traditional “brick-and-mortar” store locations. The Navajo Nation lacks any of the traditional electronics dealers where the vast majority of cell phones are sold (e.g., Wal-Mart, Best Buy, RadioShack). Smith Bagley, Inc. (SBI), doing business as CellularOne has a total of eight (8) stores on the entire Navajo Nation (or one per every 3,263 square miles – the equivalent of one store for all the residents of Delaware, or 1.5 stores for all of the state of Connecticut).

Most carriers offering service on the Navajo Nation do so through temporary set-ups at Navajo events and at Navajo Chapter Houses.¹³ As SBI states:

Many eligible citizens lacked transportation needed to travel up to several hundred miles to SBI stores. Many areas were beyond the reach of the landline telephone network. It quickly became apparent that the only way to reach these remote populations was to bring the stores out to the people.

SBI created the idea of holding activation events at tribal chapter houses located in remote areas. SBI deployed mobile stores, housed in large recreational vehicles, to visit a chapter house over a weekend, where it set up customer service tables. The company offered full-service to consumers, including activation, service, educational clinics on how to use the phone, and anything else customers needed to begin or continue phone service. In the absence of these outreach efforts, it is unlikely that many remote areas would have received access to any telephone service.¹⁴

The NNTRC agrees with these comments. Without bringing the phones to the people, SBI is correct that telephone penetration on the Navajo Nation would still be well below 50%,

¹³ See Comments of Smith Bagley, Inc., filed in Dockets 11-42 and 03-109 on June 4, 2013.

¹⁴ *Id.*, p. 2.

rather than the current penetration of 72.1% (which is itself still remains a tragedy in the nearly ubiquitously interconnected world of the 21st Century). With the loss of 30% of Lifeline customers, that 72.1% penetration rate is sure to drop significantly.

While these proposals may make some sense for carriers who wish to drive traffic to their stores, or who don't care to literally "go the extra mile" to provide personal service to Lifeline customers, they make no sense for the Navajo, already at distinct geographic and economic disadvantages in trying to bring telecommunications services onto the reservation. The FCC must continue to *encourage* legitimate use of the Lifeline/Linkup program for Tribal members, not throw up further hurdles, especially in light of the number of Navajos now denied Lifeline support under the recent recertification process.

III. CONCLUSION

The Commission took major steps to reform the Lifeline/Linkup program in 2012. Before any further measures are enacted to further limit or hinder the ability of tribal members to receive or continue using their Lifeline phones, the FCC must first assess the success of the recent reforms, including determining whether individuals who are eligible for Lifeline support nonetheless has been stricken from the rolls. No new burdens should be placed on Lifeline subscribers at this time.

For the reasons set forth herein, the NNTRC urges the FCC to reject the TracFone
Petition and the Nexus Proposal.

Respectfully submitted,

**NAVAJO NATION TELECOMMUNICATIONS
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